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POLITICAL SCIENCE QUARTERLY.

JAMES WILSON IN THE PHILADELPHIA CONVENTION.

THE work of James Wilson as a framer of the constitution seems not to have received its just recognition. The more careful historians who have worked over the period testify to his ability and influence; but their praise is general, not particular. No one has attempted to isolate him, to show with some definiteness what were his ideas on the more important problems that presented themselves in the organization of the new government, to discover what were his contributions to the wisdom and the statesmanship of the Philadelphia Convention. While it is true, indeed, that historians have given him passing commendation, his name has generally been linked with the names of other men far less deserving; and this argues lack of full appreciation. We are asked, for example, to admire the work of Gerry and Sherman and Franklin and Robert Morris and Dickinson and Randolph and Mason. Yet some of these men contributed little to the results of the convention; while others of them were at times obstacles in the way to a reasonable conclusion or advocates of the sheerest folly. If Wilson's work be closely examined, its greatness and worth will appear, and will place him above all but one or two men of the convention. Perhaps Madison alone can be called his equal in judgment and far-sighted wisdom. Certainly Wilson was one of the four men who bore the burden in the heat of the day — who fought with desperate and magnificent energy in the greatest controversy of the convention. But for Madison, King, Gouverneur

Morris and Wilson; narrow, selfish particularism might have won the victory in the long battle that was waged between the friends of nationalism on the one hand, and those of contracted localism on the other. To the keen understanding, the sound judgment, the great debating power and the vigor of these four men do we owe it that a really national government was established. Wilson's part in this contest deserves attention and challenges admiration.

Although Wilson showed sense and judgment with regard to the details of the new government, petty forms and complicated devices seemed to have little attraction for him. His mind seemed by instinct to seize the essential, and to pass over the trivial and unimportant without friction or confusion. Thus it happens that, judging his work in the light of a century's experience, we see little we would find fault with. He took slight interest in mere mechanism, if the fundamental principles were comprehended and applied. For the work of the convention, therefore, the character of his mind especially adapted him. The constitution is not an instrument of detail and particularity, but is wisely general, enumerating powers but not defining them, recognizing the necessary basis of a national government and the suitable rights of the states. From Wilson's career it is plain that he was not one of those statesmen who master details, who work with promptness and decision for the accomplishment of palpable objects. Nor was he one of those statesmen who know men with unerring judgment and work through others keener and subtler than themselves to ends but dimly seen. Nor was he one of those who feel acutely the life of the state, and make a way for its progress because they feel within themselves the pulsation of its higher and better life. Something of this latter power he undoubtedly had in him; but his greatest talent was of a different nature. He was above all a political scientist: he had grasped firmly the teachings of the past so far as they disclosed the nature and organization of the state and the safest principles of judicious government. He was a student of history, and his study had brought him organized knowledge. He

was not a master of the art of politics, but he knew with scientific accuracy the fundamentals of statecraft. He was suited above all else to share in the building of a new state and to labor as the architect of a new government. One who studies his words is deeply impressed with the folly of those who were striving for local advantage or seeking to build a state on the frail foundations of meagre knowledge and narrow experience, and realizes the force and influence of the men who paid reverence to history and contended in and out of season for the recognition of its soundest and deepest teachings. Especially clear, too, becomes the error of the modern commentators who derive the motive ideas of the Philadelphia Convention from foreign text-books on law or politics. The men of the convention, and Wilson above all, were not rote-learners: they did not absorb unquestioningly the lessons of Blackstone or of Montesquieu. They were themselves original seekers after truth, making their own inductions and extorting the principles of their science from the raw materials of history.

To appreciate the value of Wilson's work we need to call to mind the condition of the country and the evils which the convention was called upon to remedy. In one sense there is no need to rehearse the difficulties of the critical period. Every schoolboy is taught the failures of the dismal Confederation, is led to lament the awful spectacle of "a nation without a national government." But the form of such teaching has often obscured the plainest truth. Scholarly books that treat of the period seem to miss the essential and to dwell upon the accidents. The Articles of Confederation are held up to ridicule and abuse, and the finger of scorn is pointed at the impotent Congress as a mere pretense—a charlatan among governments. The main lesson gathered is that the central government ought to have had greater power—the right to collect tariff duties, to enforce treaties, to regulate interstate commerce and the like. Now this is the way that men commonly spoke in the midst of the trials of the time. Only the men of wisdom detected the real meaning of the situation. They saw, as we ought to see, that the Confederation was a

failure simply because actual conditions made a confederation an impossibility. In declaring that each state retained its sovereignty, the Articles of "the league of friendship" spoke the language of arrant falsehood. Legal sovereignty the presuming states might assume, and sovereign they would be on paper; but there remained the fundamental fact — which gave the lie to all fictions of law—that there was, and could be, but one ultimate source of political power in America, and that was a united people. When Daniel Shays and his band arose in Massachusetts to demand new tables and to wreak a surly vengeance on the courts and lawyers, the startled people turned instinctively for help to the nation. For the nation existed, and the need of the time was its recognition by the organization of a national state. Only when political and legal forms tallied with the fundamental fact of society could justice be established or domestic tranquillity ensured. Reformers who saw merely the surface clamored for greater power in Congress. But a congress with greater power, if still the agent of sovereign states, would have continued to be out of joint with the overruling fact. What was needed was, not a juggling with powers and authorities, not an adding of complexity to confusion, but simply the organization of a state on the broadest and most rational basis. It is not strange that men sought to tinker the Confederation. There are always quacks with pet nostrums, and physicians who treat the symptoms, but do not cure the disease. The remarkable thing is that there were in 1787 so many men who saw the need of a bold operation to remove the root of the whole evil.

The great need of the time, then, was the recognition of the fact that there was an American people; that there must be one government rising from them and over them; that this government must come in contact with its own citizens; that state selfishness and greed, the bane of the old order, must be checked by making the new government sufficient unto itself — in short, that there must be provided an organization for a pure, national state, broad in its purposes and broad in its foundation, with an adequate means of expressing its sovereign

will. It was because Wilson saw all this with clearness that his work in the convention was of the highest order. He had no patience with half measures or mild palliatives. In the discussions of every detail he bore the fundamentals in mind.

The work of the convention is easily divisible into three distinct parts. It was necessary to decide: first, what should be the nature and character of the new organization, — whether it should be a *government* or the agent of sovereign states, whether, in fact, there should be one state or another more complex confederation of states; second, what should be the powers confided to the government; third, what should be its mechanism and form. Of these the first is plainly the most important: were the decision on this point wrong, all other wisdom would be folly. In the decision of this first great question Wilson took a keen interest. The principle was practically involved in all discussions on the basis of representation. Were the states equally represented in Congress, the groundwork of the new government would be states and not persons. Only representation proportioned to population would give a just and reasonable foundation for a real national assembly: on any other principle, whatever might be the powers bestowed upon the central authority, it would be inherently weak and defective, because there would be no just recognition of the only pure and safe source of power — the people of the United States.

An examination of the debates in the convention will show what part Wilson took in the solution of this all-important problem. It will be remembered that the basis of the convention's work was a plan introduced by Randolph of Virginia. The day after this plan was presented a fundamental resolution was adopted, declaring "that a *national* government ought to be established consisting of a *supreme* legislative, executive and judiciary." The succeeding day, after it had been resolved that the national legislature ought to consist of two branches, a discussion arose on the method of election. Here there were difficulties. Many feared the people as the source of power; and others seem to have feared encroachments on the power and influence of their respective states,

although as yet the so-called small-state party, bent on preserving the equality among the members of the Union, had not been formed. Wilson was from the outset at once democratic and national :

He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Later in this same day he opposed the proposition that "the second branch of the national legislature ought to be chosen by the first branch out of persons nominated by the state legislatures," holding that the second branch ought to be independent of both the first branch and the state legislatures. "He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition." It was characteristic of him to be sure of the principle, but not to take interest in the mechanism.

We have thus in embryo at the very beginning of the convention three ideas which Wilson later elaborated and never abandoned: the national authority must be strong and high, but its source must be the people; the people were to be trusted, and on their confidence the new government must rest; the government was to be over men and to have as few points of contact as possible with the state governments. These propositions, all closely related, are maxims of profoundest wisdom. Because the convention realized their force and embodied them in the constitution, its work was successful.

Bent on building the new government upon the surest foundation, Wilson insisted that the constitution must be ratified by popular conventions, not by the legislatures of the states. So

important did this principle seem to him that he declared, early in the history of the convention, that if a plurality of states were disposed "to confederate anew on better principles," they ought not to allow their purpose "to be defeated by the inconsiderate or selfish opposition of a few states." This hint Madison tells us was "probably meant *in terrorem* to the smaller states of New Jersey and Delaware": it is one of the first indications that a small-state party was forming. This frank, straightforward announcement that the proper principles must be observed, even though complete union be not immediately secured, was typical of Wilson's state of mind. Throughout he was one of the few unbending stalwarts of the assembly.

As the convention continued its work, difficulties increased rather than diminished. At first it had seemed probable that the fact of nationality would be fully recognized, and that a national government would be erected in conformity with this overruling idea; but as the days went by, the jealousies of the small states increased, and their opposition became more keen and bitter. No peace was possible until the great principle involved in the proper basis of representation was irrevocably established. Wilson returned time and again to his main assertion, that the government must be founded on the people, and must not come into contact with state officers. At first he dwelt chiefly on the idea that the government ought to possess the "*force*" and the "*mind or sense* of the people at large" — that all antagonism between state governments, on the one hand, and the national government, on the other, must be carefully avoided by making the people the electors, and by drawing the power of the central authority from the real source of political energy. But when the small-state party began to demand from the convention a recognition of the states as the basis of the new government, seeking in fact to build up another confederation, more complicated in its mechanism, but still in essence a "league of friendship," then Wilson's full national spirit was aroused, and in common with Madison and King, and others less powerful in debate, he entered lustily into the contest. Patterson of New Jersey, on June 9, came out flatly in favor of a confederation.

"A confederacy," he declared, "supposes sovereignty in the members composing it, and sovereignty supposes equality. New Jersey will never confederate on the plan before the committee. She would be swallowed up. She had rather submit to a monarch, to a despot, than to such a fate." Wilson, answering him, "entered elaborately," Madison tells us, "into the defense of proportional representation, stating as his first position that as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people different numbers of representatives." "If New Jersey will not part with her sovereignty," he exclaimed in closing, "it is vain to talk of government." Time and again this discussion arose; and Wilson was ever ready to battle for the national principle.

On June 29, after the convention had been in session a month, it was finally determined that the rule of suffrage in the first branch of Congress should not recognize the equality of the states. The vote stood six states to four, with one (Maryland) divided. This result was uncomfortably close. Immediately after this decision the small-state men entered upon the attack again, now demanding equal representation in the Senate. Wilson's speech in opposition was a masterpiece of sound and sensible argument. It was one of the strongest speeches delivered in those four months of constant debate. It was not loaded with aphorisms about the nature of man or the evil tendencies of democratic society, or with such other matters as filled many of the speeches of the time. It was plain, practical sense.

Can we forget [said he] for whom we are forming a government? Is it for *men*, or for the imaginary beings called *states*? Will our constituents be satisfied with metaphysical distinctions? . . . The rule of suffrage ought, on every principle, to be the same in the second as in the first branch. If the government be not laid on this foundation it can be neither solid nor lasting. Any other principle will be local, confined and temporary. This will expand with the expansion, and grow with the growth of the United States. . . . It is all a mere illusion of names. We talk of states till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy?

But, excited as he was, justice and wisdom did not forsake him. He was not foolish enough to desire the destruction of the states. "He thought the states necessary and valuable parts of a good system."

It must be noticed that the plan of proportional representation in the Senate seemed to accentuate the idea of nationality even more than in the case of the House; for if the Senate was to be a small body, and its members popularly elected, *state boundaries could not be regarded*.¹ Each small state could not have even one member, for that would make the number too large. The people of Delaware must be joined to a part of those of Pennsylvania to form a senatorial district. This points to the conclusion that the nationalists were not simply struggling for the due weight and influence of their respective states, but were seeking the broadest popular basis for the new government.

Wilson was now ready, however, to offer a reasonable compromise.

If the smallest states be allowed one [senator], and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest states will contain a hundred thousand souls at least. Let there be, then, one Senator in each for every hundred thousand souls, and let the states not having that number of inhabitants be allowed one.

King and Madison, who with Wilson were the unyielding advocates of national representation, intimated that they were willing to accept this compromise; but it was not adopted.

After the convention had evenly divided on the question of allowing equal representation in the Senate, a grand committee,

¹ If I understand Curtis's History of the Constitution (vol. ii, pp. 224, 225) aright, he does not interpret as I have done here the arguments and desires of the leading large-state men. They never clearly stated in so many words their desire to disregard state boundaries in the elections. It is barely possible that they did not force themselves to the limit of seeing exactly what their ideas meant. But Madison's footnotes seem to leave no doubt that the situation was as it is stated in the text. — Elliot's Debates, vol. v, pp. 168, 240, footnotes; Wilson's and King's remarks, p. 38; Wilson's remarks, pp. 125, 266; King's remarks, p. 280; Madison's remarks, p. 280. See also Writings of Rufus King, pp. 596, 597.

composed of one member from each state, was selected and directed to consider the whole matter. Wilson opposed this committee, on the ground that a decision would surely be rendered against the large states. The result proved him right. The committee was made up without a single one of the strong and unyielding men from the large-state side. Not King¹ but Gerry, not Madison but Mason, not Wilson but Franklin—who could not forget diplomacy—represented the largest states, from which had come the strongest opposition to localism. One would fain have the history of the choice of that committee. When the advocates of proportional representation were at least equal in number with the particularistic party, how did it happen that such a committee was selected? The large-state men were in some way outgeneraled and outwitted in the choice of this extraordinary body. As one studies these debates, and strives to see through the meagre printed page into the passions and emotions of that great battle where the stake seemed to be a nation's life, he feels strongly drawn to the fearless, uncompromising men who stood forth defiantly as the representatives of generous nationalism, as unwavering opponents of the forces of selfish localism and dissolution. It may be that, without the yielding spirit of men like Franklin, the smaller states would have refused to participate further in the work of the convention. But what would have been the result had there been no men who were thoroughly fearless and consistent, thoroughly appreciative of the greatest of the fundamental facts, thoroughly devoted to America, and not swaddled in provincialism? Morris spoke in his bold, cynical way too near the truth when he said: "The states had many representatives on the floor. Few, he feared, were to be deemed the representatives of America."

¹ It may seem strange that Rufus King is here mentioned and not others. King did not speak much, but, when he spoke, what he said was full of sense. I find few speeches in the debates more sensible than those he delivered on June 30 and July 14. He was close by the side of Wilson in his argument. Hamilton was not present at the time, being absent from June 29 to August 13. Morris, a perfect colossus in debate, left the convention a few days after it began its work, and did not return till July 2. It will be found that these men were the most straightforward, logical and unyielding advocates of nationalism.

The grand committee reported a compromise granting to the lower branch of the national legislature the right to initiate all bills for raising or appropriating money, and conceding to the small states an equal vote with the large states in the Senate. This formed the basis for discussion for some time, but not till the middle of July was the vexed question settled. The vote was five to four. Massachusetts, whose vote would naturally have been with the large states, thus making a tie, was divided. "Lost by the vote of Massachusetts," wrote King mournfully in his minutes.¹ One can picture the disgust and distress of the leaders of the national party. They were angry, combative, but finally, it seems, disheartened. The party considered in caucus what should be done. One faction, in which we feel sure were Wilson and Morris at least, advocated continued opposition to the small-state plans; but a yielding disposition now prevailed with many, and the caucus reached no decision.

We may inquire whether Wilson's opposition was the part of wisdom or of factious obstinacy. It may without hesitation be asserted that the Senate has never stood as the special champion or defender of the small states, for no controversy requiring such an attitude has arisen in our history. The sensible men in the convention showed time and again that a combination of the large against the small states was a mere figment of the imagination. Some saw with rare insight the really dangerous antithesis which lay in the fact that the interests of the North and of the South were different. It is sometimes asserted that the composition of the Senate, as it was finally determined upon, was wise, because it has given prominence to the federal principle, and because states have been protected against encroachments and their rights preserved. The fallacy of this assertion rests in a fancied but unreal dualism. The citizens of the states and the citizens of the United States are the same persons, and no destruction of state privileges is possible

¹ King's exact words are: "This vote was taken, and to my mortification, by the vote of Massachusetts, lost on the 14th of July."—*Writings of Rufus King*, vol. i, p. 616.

unless the state citizens are acquiescent. It cannot be asserted that the Senate has ever stood specially as a bulwark against the forces of centralization. Again, it has been argued that the fears of the national party were as groundless as those of the localists, inasmuch as neither the equality of representation in the Senate nor the method of election has endangered the national government. To this it may be answered that, had the senators been elected as Wilson proposed, it is doubtful if even John C. Calhoun could have had the temerity to bring forward his treaty theory of the constitution : the really national character of the national government would from the outset have appeared in a clearer and less mistakable light. In the midst of the distress, uncertainty, blind confusion and perplexity of the critical period, Wilson was a wise statesman in advocating the clearest possible announcement that the new government was built on men and for men, not on states or for states.

In Wilson's speech of June 25, he rose to the fullest height of statesmanship in disclosing the argument for proportional representation :

He was opposed to an election by the state legislatures. In explaining his reasons it was necessary to observe the twofold relations in which the people would stand, — first, as citizens of the general government, and secondly as citizens of their particular state. The general government was meant for them in the first capacity; the state governments in the second. Both governments were derived from the people, both meant for the people ; both, therefore, ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their state governments were applicable to their relation to the general government ; and in forming the latter we ought to proceed by abstracting as much as possible from the idea of the state governments. With respect to the province and object of the general government, they should be considered as having no existence. The election of the second branch by the legislatures will introduce and cherish local interests and local prejudices. The general government is not an assemblage of states, but of individuals, for certain political purposes ; it is not meant for the states, but for the individuals composing them. The *individuals*, therefore, not the *states*, ought to be represented in it.

This speech is given an unusually large space in King's minutes of the convention; and there this idea of double citizenship is given with perhaps greater clearness than in the foregoing words quoted from the "Madison Papers." Wilson in these sentences gave the fundamental idea of the federal state; and because it was he who did present these thoughts so conspicuously, he deserves unstinted praise. This double allegiance and double obedience owed by each citizen to two governments, each distinct from the other, and each supreme in its own field, is the most striking and the most important feature of the political organization of our country. Because this principle has been so completely worked out, political scientists of to-day may point to the United States as the model federal state. It is the surest and purest basis for federalism; and it represents the greatest of our achievements in statecraft. It is wonderful that Wilson should have grasped this principle so firmly and insisted on it so strenuously, when the men around him were striving eagerly for some local advantage or, if wise and generous, were too often lost in the contemplation of the mere mechanism of government. Seventy years later, at another fateful period in our history, statesmen saw but dimly this great fundamental fact in our political system. James Buchanan and Jeremiah C. Black, wrestling in agony of spirit with the problems of secession, begat together the mysteries of that wonderful message, which declared that secession was illegal, but that there was no legal means to prevent it, because the national government could not coerce a state. They apparently did not comprehend these elementary facts which Wilson so clearly stated. Our system does not contemplate antagonism between governments; but the national government is a government over men — can demand obedience from them, and is under obligations to enforce its decrees upon them. Even as late as the Slaughter House cases, Judge Miller found it necessary to elaborate at length this fundamental principle, because it had been beclouded by discussion. "It is quite clear then," said he, "that there is a citizenship of the United States and a citizenship of a state which are distinct from each other, and

which depend upon different characteristics or circumstances in the individual.”¹

The limits of this paper will not allow a minute account of the opinions of Wilson on all the problems that were presented to the convention for solution. As has been said, he was not greatly interested in forms, if fundamental principles were observed; and he did not, therefore, speak at great length when the mechanism of the government was under discussion. Two or three ideas for which he stood, however, deserve special attention.

He had from the outset the clearest and most sensible ideas regarding the executive. He wished to have the chief magistracy confided to a single person. “All know,” he said, “that a single magistrate is not a king.” With keen insight into practical politics he objected to a council to assist the president. “It oftener serves to cover than prevent malpractices,” was his trenchant criticism. Anxious to separate the executive from the congress, he pointed out the fact that legislative tyranny was possible, and that the president must have means of self-defense. He did not seem to see so clearly the desirability of separating the executive and judicial departments: in common with some of the wisest men of the convention, he advocated the union of the judges with the president in the privilege or duty of vetoing laws. In this he and Madison and Gouverneur Morris were at one; and were, as we know, finally overruled — and wisely. On the method of electing the president, Wilson stood for a time almost alone, and had to fight his battle single-handed. It is well known that the manner of choosing the president gave rise to some of the greatest difficulties with which the convention wrestled. Device after device was proposed, and various plans were temporarily adopted. Wilson was from the beginning in favor of popular election. The reactionary undemocratic character of the convention is strikingly illustrated by the hesitancy with which he first gave utterance to this idea. “He was almost unwilling,” he said, “to declare the mode which he wished to take place, being

¹ 16 Wallace, 36, 72.

apprehensive that it might appear chimerical." But he stated his preference for an election by the people, and later offered a resolution providing for the division of the states into electoral districts whose voters should choose presidential electors. To the very end he advocated the mediate or immediate election by the people. At one time Pennsylvania alone voted for popular election. Though defeated at first, Wilson returned time and again to his original propositions; and after sifting and tentatively adopting other methods, the convention was finally forced to accept a system which made possible, at least, the mediate election of the president by the people, although the state legislatures might assume the power.

All that Wilson did to establish the government on a safe foundation, or to arrange aright its forms and methods of operation, gave evidence of a wise and catholic spirit; but more significant still was his appreciation of the life and soul of the American state. In this respect he was head and shoulders above his great colleague Morris, and above even Madison himself. Wilson was thoroughly democratic: all that he did for nationalism he did likewise for democracy. The convention was deeply impressed with the extravagances of the populace: what has since been called the Federalistic syllogism — democracy, anarchy, monarchy — seems to have ruled, even then, the thoughts of many. The whole assembly was more or less imbued with reactionary dread of popular fickleness and folly. Not only was this true of natural aristocrats like Morris, and of men, like Hamilton, whose talent was for governing; but even Madison and Gerry, who were later found within the Jeffersonian fold, were now apprehensive of democratic intemperance. "The evils we experience flow from the excess of democracy," was one of Gerry's shallow opinions. Madison wished to guard against the "levelling spirit," symptoms of which he saw already appearing. Wilson, on the contrary, was given over to the democratic faith. He was not patronizing to the populace or condescending, — quite the reverse. Filled with the democracy of the next century, he considered himself the servant of the people, and sought to minister to them. He desired a national

government because the people were ready for it; and he trusted their sense and justice.

He could not persuade himself [said he at one time] that the state governments and sovereignties were so much the idols of the people, or a national government so obnoxious to them, as some suppose. . . . Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of the governments? No, sir. It is from the national councils that relief is expected. For these reasons he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan, that it is to be submitted to *them* and not to the *legislatures* for ratification.

He was in his whole spirit at variance with Morris, "who on all occasions," said Madison sharply, "had inculcated the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest."

Wilson's nationalism and democracy speak continually together, but never more wisely and well than in defense of the Western people. To their growth in political rights and privileges it was gravely proposed to place an impassable boundary, because, forsooth, to quote Morris, "the busy haunts of men, not the remote wilderness, was [*sic*] the proper school of political talents," and because "the back members are always averse to the best measures,"¹ and because of other reasons begotten of sectional jealousy and aristocratic myopia. Wilson swept all such narrow dread aside.

Conceiving that all men, wherever placed, have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people, wherever found, ought in all questions to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no.

¹ Remarks of Morris, July 11 (see also those of July 5-10); remarks of Gerry, July 14. It is interesting to notice that this fear of the West actually influenced the committee appointed to consider the numerical basis of representation. — See Gorham's remarks, July 9.

There was perhaps no great danger that the convention would be guilty of such unmitigated folly and narrow sectionalism as Morris and Gerry advocated, but the West owes to Wilson a debt of gratitude for propounding these democratic propositions so clearly. It is a very curious and interesting fact that on the very day, July 13, when Wilson so skilfully attacked this policy of exclusive tide-water statesmanship, the despised Congress of the Confederation immortalized itself by passing the Ordinance of 1787, one of whose chief glories is the recognition of the equality of the Western people with the inhabitants of the old thirteen states.

Wilson's democracy so thoroughly underlay all his actions that it has been impossible to call attention to any considerable portion of his work without showing the domination of this spirit. His words would have seemed natural had they been spoken at the beginning of the nineteenth century or later, for his democracy was precocious. It was Jeffersonian, but it was free from the nonsense with which the great founder of the democratic party and the seer of modern Americanism was then loading his correspondence. Wilson could not

agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of representation.

This was sublimated Jeffersonism, the doctrines of the Virginia politician and philosopher in their purest state. Not government, Wilson seems to say, not wealth, not even the peace and safety and well being of the individual are the highest aims and wants of man; but progress, development, growth to higher and better status for each man, who, after all is said, must be the unit of the state and society. Yet he was free from Jeffersonian nonsense. He made use of no aphorisms about a little rebellion being a good thing now and then, or about "refreshing the tree of liberty with the blood of patriots and tyrants, its natural manure." Moreover, he did

not, like Jefferson, confuse state sovereignty and particularism with democracy. He even appreciated the nature of the democratic state more fully than Jefferson; for it is certainly no attack upon the principles of democracy to recognize the homogeneity of the nation, to give to a government, really emanating from the people, power, dignity and vigor, to give to the governmental machinery efficiency in executing the people's will. The broad national democracy of the Jacksonian era was thus foreshadowed by this Scotch philosopher in the Philadelphia Convention; and he contributed not a little to bring it about, that in later years the state was thoroughly imbued with the democratic spirit, and the government acutely sensitive to the popular will.

When Wilson saw so clearly the absolute necessity that the government should spring from the people as the legitimate source of political authority, it may at first seem strange that he did not assert emphatically the doctrine taught by many modern political scientists. Why did he not assert more positively that the constitution was law; that it issued from the authority which is the sole source of law; that the establishing power was the people of the United States, not the people of thirteen separate sovereignties; that union into a single being came before the sanction which gave the constitution the force of law; that the will of the sovereignty of a new state was expressed in the act of ratifying and establishing the constitution, though in performing this act the people were geographically divided? The reason is plain enough: he did not so assert because entirely different conceptions with regard to the origin of law held sway in his mind. In this he was not peculiar: the compact theory of government was dominant everywhere. If government with power could arise from agreement among individuals, so could it spring from agreement between bodies of individuals. The idea that government received its authority from the consent of the governed was a pet idea with Wilson. Not only in the convention did he give utterance to that formula; but, in his law lectures delivered in 1791, he stated the proposition over and over again, and gloried in the fact that

America had realized and adopted it. He attacked Blackstone in a succession of lectures, with intent to disprove the assertion that law is a rule of action laid down by a *superior*. Why this conception of the origin of government in contract was all powerful in America at that time is easy of explanation, but a full discussion would go beyond the limits of this paper. It is sufficient to say that the colonists were the political offspring of the seventeenth century; that to them the Revolution of 1688 meant more by example than it did, perchance, even to the people of England; and that the arguments and facts leading up to the separation from the mother country tended to emphasize the doctrine of natural rights and the theory that society and government had their beginnings in agreement.

In his learned discussion in the case of *Chisholm vs. Georgia*, delivered in 1793, Wilson comes near to a clear enunciation of the doctrine that the people of the United States established the constitution. In fact, he does so state, though the idea of divided sovereignty holds him.

As a judge of this court [he says], I know and can decide upon the knowledge that the citizens of Georgia, when they acted upon the large scale of the Union, as a part of the "People of the United States," did not surrender the supreme or sovereign power to that state; but as to the purposes of the Union retained to themselves.

The language is not exceedingly clear and explicit, but he comes, at least, to an assertion of the existence of the "People of the United States." This assertion, however, gleams out from pages loaded with arguments on behalf of the contract origin of government. Thus, he says:

The only reason, I believe, why a free man is bound by human laws is that he binds himself. . . . If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do likewise?

Wilson's whole state of mind on this subject is very illuminating. If he, the broad, generous nationalist and democrat, was ruled by these conceptions, need we expect to discover anywhere the assertion that the new government was the

creature of the new state, and that the constitution as law received its sanction from the indivisible will of an indivisible sovereign? A study of his words shows beyond peradventure how impossible it was for such ideas of modern political science to germinate in the soil of 1787.

It may seem strange that a man who did so much has received so little general recognition. Even the men of the convention and the statesmen of the time scarcely mention his name. Madison's correspondence gives no indication of Wilson's greatness. Washington speaks of him only once or twice; but, with his usual fairness and insight, asserts that he was one of the ablest men of the convention. This reticence with regard to a man of such conspicuous ability can, however, be partly explained. He seems not to have won men strongly by his personality. He does not seem to have made and retained personal friends among the men whose correspondence we have. His real kindness of disposition seems to shine out so clearly from the pages of his lectures on law, that one hesitates to attribute this lack of friends to any inherent unlovableness on his part; but he must have been a curious, angular being, given to repellant learning and possessed of prolix and voluble wisdom. The shortness of his public career after the organization of the new government may account for the partial oblivion that has crept over his name. His career was blighted by financial troubles brought on by speculation in wild lands; and he died almost an outcast, in mortification and sorrow, ten years after the adoption of the constitution, which bears so plainly the marks of his hands.

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